

[Case Title] In re: Boltec Industries, Inc., Debtor  
[Case Number] 91-21463  
[Bankruptcy Judge] Arthur J. Spector  
[Adversary Number] XXXXXXXXXX  
[Date Published] January 8, 1993

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - FLINT

In re: BOLTEC INDUSTRIES, INC.,

Case No. 91-21463

Chapter 7

Debtor.

---

**MEMORANDUM OPINION PARTIALLY ALLOWING AND  
PARTIALLY DISALLOWING FIRST APPLICATION  
OF NATHAN & NATHAN, P.C. FOR INTERIM  
FEES AND EXPENSES AS ATTORNEY FOR TRUSTEE**

On March 4, 1992, the Court entered an order converting this case from chapter 11 to chapter 7. Subsequently, the United States trustee appointed Kenneth A. Nathan as the trustee of this estate, and Mr. Nathan hired his lawfirm, Nathan & Nathan, P.C., to act as trustee's counsel. On October 2, 1992, Nathan & Nathan, P.C. filed its first request for interim compensation and reimbursement of expenses as attorneys for the trustee. After an extended period of service on interested parties, the matter came before me for decision.

For the primary reason that a large part of the work performed by the lawfirm was work which a non-attorney could have, and in this case, should have performed as trustee, the Court determines that the work was not commensurate with the duties of legal counsel and therefore should not be compensated. A specific breakdown and description of these services

follows:

Date of Service	Attorney	Service in question	Time	Amount
03/24/92	RBN	Telephone conference with North Star Equipment re: offer to purchase all equipment of Boltec	0.20	\$30.00
03/25/92	RBN	Telephone conference with Joe Giampetroni re: discuss terms of North Star equipment offer	0.20	\$30.00
03/26/92	RBN	Telephone conference with Jim Junker re: possible sale of equipment	0.20	\$30.00
03/27/92	RBN	Telephone conference with Robert, owner of North Star Equipment, re: terms of offer to purchase Boltec assets.	0.20	\$30.00
05/04/92	KAN	Telephone conference with Creps re: appraisal.	0.30	\$40.50
05/05/92	KAN	Telephone conference with Bill Newman re: interest in purchasing real estate.	0.20	\$27.00
05/13/92	KAN	Telephone conference with Burtless-Creps re: offer of MNP and appraisal; telephone conference with Lipton re: appraisal; review of prior appraisal; review of correspondence from Burtless-Creps with MNP offer attached.	1.50	\$202.50
05/14/92	KAN	Telephone conference with Craig Stormer re: purchase of assets	0.20	\$27.00
05/14/92	KAN	Telephone conference with Burtless-Creps re: appraisal.	0.20	\$27.00
05/20/92	KAN	Telephone conference with Al		

		Loewenstein re: auction	0.20	\$27.00
05/20/92	KAN	Telephone conference with Mel Peters re: sale of assets	0.20	\$27.00
05/27/92	KAN	Telephone conference with Sgt. Brown re: possible break in; telephone conference with Burtless-Creps re: break in and surcharge order.	0.40	\$54.00
05/27/92	KAN	Telephone conference with Mike Maloney re: purchase of truck	0.20	\$27.00
05/29/92	KAN	Telephone conference with Joanne at Consumers Power re: payment; make payments to Edison and Con- sumers Powers.	0.50	\$67.50
06/02/92	KAN	Telephone conference with Mel Peters re: sale.	0.20	\$27.00
06/03/92	KAN	Telephone conference with Mel Peters re: status of sale.	0.20	\$27.00
06/24/92	KAN	Telephone conference with Ray Banker re: purchase of building.	0.20	\$27.00
06/25/92	KAN	Telephone conference with Steve Howell re: sale of equipment; telephone conference with Mel Peters re: offer.	0.50	\$67.50
06/26/92	KAN	Telephone conference with Steve Howell re: asset sale; telephone conference with Mel Peters re: same.	0.50	\$67.50
06/30/92	KAN	Telephone conference with Craig Stormer re: equipment for sale	0.20	\$27.00
07/01/92	KAN	Telephone conference with Mel Peters re: offer.	0.30	\$40.50
07/02/92	KAN	Telephone conference with Gary		

		Lipton re: appraisal	0.20	\$27.00
07/06/92	KAN	Review amended offer re: 60 days use of premises; telephone conference with Burtless-Creps re: same.	0.40	\$54.00
07/07/92	KAN	Telephone conference with Mel Peters re: offer and date of sale	0.20	\$27.00
07/08/92	KAN	Telephone conference with Mel Peters re: deposit check.	0.20	\$27.00
07/08/92	KAN	Telephone conference with Joanne at Consumers Power re: payment.	0.20	\$27.00
07/08/92	KAN	Telephone conference with Bill Neuman re: viewing Boltec plant for purchase.	0.30	\$40.50
07/13/92	KAN	Travel to and show Boltec facility to Bill Neuman of Budget Systems.	3.20	\$432.00
07/14/92	KAN	Telephone conference with Mel Peters re: sale.	0.20	\$27.00
07/17/92	KAN	Telephone conference with Ed- mundson re: sale of building.	0.20	\$27.00
07/30/92	KAN	Review of revised offer of Continental Press.	0.20	\$27.00
08/06/92	KAN	Telephone conference with Levy re: access to premises and terms of sale.	0.30	\$40.50
08/07/92	KAN	Telephone conference with Stormer re: terms of sale	0.20	\$27.00
08/07/92	KAN	Telephone conference with Levy re: terms of sale.	0.20	\$27.00
09/14/92	KAN	Review of correspondence from Sklar re: Optical Boring	0.10	\$13.50

09/21/92	RLR	Review file to determine what expenses must be paid in order to prepare motion for disbursement.	1.20	\$138.00
TOTAL:			14.10	\$1891.50

The services listed above consist primarily of communicating with various parties regarding the sale of the assets of the estate. The trustee in bankruptcy has a statutory duty to sell the property. 11 U.S.C. §704(1). These services are to be performed by the trustee and not delegated to his lawyer. The attorney is not entitled to compensation for the performance of the trustee's duties. In re J.W. Knapp Co., 930 F.2d 386 (4th Cir. 1991); In re Gary Fairbanks, Inc., 111 B.R. 809 (Bankr. N.D. Iowa 1990); In re Churchfield Mgmt. & Inv. Corp., 98 B.R. 838, 874, 878-880, 884-886 (Bankr. N.D. Ill. 1989); In re McKenna, 93 B.R. 238 (Bankr. E.D. Cal. 1988); In re King, 88 B.R. 768 (Bankr. E.D. Va. 1988); In re Wildman, 72 B.R. 700, 15 B.C.D. 1189 (Bankr. N.D. Ill. 1987); In re Taylor, 66 B.R. 390 (Bankr. W.D. Pa. 1986); In re Wilmon, Inc., 61 B.R. 989 (Bankr. W.D. Pa. 1986); In re Santoro Excavating, Inc., 56 B.R. 546, rehq denied, 58 B.R. 131 (Bankr. S.D. N.Y. 1986); In re Shades of Beauty, Inc., 56 B.R. 946, 949 (Bankr. E.D. N.Y. 1986); In re Minton Group, Inc., 33 B.R. 38 (Bankr. S.D. N.Y. 1983); In re Whitney, 27 B.R. 352 (Bankr. D. Me. 1983); In re Crutcher Transfer Line, Inc., 20 B.R. 705 (Bankr. W.D. Ky. 1982); In re Red Cross Hospital Assoc., Inc., 18 B.R. 593 (Bankr. W.D. Ky. 1982); In re SMS, Inc., 15 B.R. 496, 500-501, 8 B.C.D. 718, 5 C.B.C.2d 806 (Bankr. D. Kan. 1981); In re

Auto-Train Corp., 15 B.R. 160 (Bankr. D. D.C. 1981).<sup>1</sup>

However, should the trustee encounter some unusual difficulties requiring legal counsel, then counsel can be retained and ought to be paid. Obviously, this would include a situation where pleadings and/or court appearances are required. In this application, there are numerous entries showing that the firm of Nathan & Nathan, P.C. performed legal services to assist the trustee to perform his statutory duty to sell the assets. Such services are clearly compensable. The Court expresses no reservation with regard to those. However, the entries itemized above are trustee activities and do not reflect legal services.

Several of the entries dealt with other duties of the trustee which, too, did not require the assistance of an attorney, e.g., the time spent discussing and disbursing payments to utilities for ongoing services;

---

<sup>1</sup>With the number of cases so stating, one would think this had once been a debatable proposition. But the Code itself proscribes compensation to a professional for performing a trustee's duties. Section 328(b) could not be clearer. It says:

If the court has authorized a trustee to serve as an attorney or accountant for the estate under section 327(d) of this title, the court may allow compensation for the trustee's services as such attorney or accountant only to the extent that the trustee performed services as attorney or accountant for the estate and not for performance of any of the trustee's duties that are generally performed by a trustee without the assistance of an attorney or accountant for the estate.

The string cite includes many cases in which the court disallowed compensation for services similar or identical to those itemized in this opinion.

visits to the premises of the debtor; discussions with the trustee's appraiser. These items too are not compensable as legal services.

In a few of the above entries, the description of the services includes more than one activity. Where the entry indicates activity which is compensable, and another activity which is non-compensable because it was the provision of a legal service, the Court has disallowed the entire time entry. As it cannot determine how much of the time entry relates to compensable services and how much relates to non-compensable services, the Court has no choice but to disallow the entire entry. The burden is on the applicant to establish its entitlement to compensation. In re Evangeline Refining Co., 890 F.2d 1312, 1326 (5th Cir. 1989) ("The applicant bears the burden of proof in a fee application case."); In re Beverly Mfg. Corp., 841 F.2d 365 (11th Cir. 1988); In re U.S. Golf Corp., 639 F.2d 1197, 1207 (5th Cir. 1981) ("The burden is on the attorney claiming a fee in a bankruptcy proceeding to establish the value of his services."); Solomon v. Wein (In re Huhn), 145 B.R. 872, 23 B.C.D. 906 (W.D. Mich. 1992); In re Cascade Oil Co., 126 B.R. 99 (D. Kan. 1991); In re Gianulias, 111 B.R. 867, 869 (E.D. Cal. 1989); In re Metro Transportation Co., 107 B.R. 50, 53 (E.D. Pa. 1989); In re Farwell, 77 B.R. 198 (N.D. Ill. 1987); In re Gary Fairbanks, Inc., 111 B.R. at 811 ("The burden is on the trustee to demonstrate that services for which attorney's fees are sought are not duties generally performed without the assistance of counsel."); In re Mayes, 101 B.R. 494 (Bankr. W.D. Mich. 1988); In re McKenna, 93 B.R. at 242; In re The Vogue, 92 B.R. 717, 719, 18



B.C.D. 679 (Bankr. E.D. Mich. 1988); In re King, 88 B.R. at 770-71; In re Harman Supermarket, Inc., 44 B.R. 918, 920 (Bankr. W.D. Va. 1984); In re Hamilton Hardware Co., 11 B.R. 326, 7 B.C.D. 963, 4 C.B.C.2d 699 (Bankr. E.D. Mich. 1981). By lumping these services into one entry, the applicant forfeits (at least for purposes of this interim application, and without prejudice to subsequent reconsideration) its right to compensation as to the portion thereof which would otherwise be entitled to compensation.

In this Court's opinion, an attorney is generally not entitled to compensation for time spent in preparing a fee application. This is true even for his own firm's application. The Vogue, supra. This would seem to be even more true where the applicant has spent time preparing the fee applications of other professionals, as in this case, where Nathan & Nathan, P.C. bills the estate for time spent preparing the appraiser's application for fees. The estate should not have to pay its attorneys for work done on behalf of another entity seeking payment from the estate. Accordingly, the time billed by the applicant for preparing and filing the application for compensation of Williams & Lipton Company as trustee's appraiser, to-wit: 1.5 hours of services amounting to \$176.50, is also disallowed.

The applicant requests reimbursement of expenses incurred in the amount of \$159.88. Its itemized statement of disbursements indicates that it seeks reimbursement of \$83.00 for 83 pages of fax it sent to others. In addition, it seeks \$21.75 for a Federal Express package to an attorney in downtown Detroit, \$4.58 for postage, \$8.55 for a long distance telephone

call, \$15.00 for copies of financing statements and \$27.00 for photocopies.

The Court is not typically aware of the time pressures involved in a case such as this. However, what little appears in the record of this case, which, after all, is a chapter 7, tends to indicate that there were no significant time pressures involved here. Why then was it necessary that so many messages by the applicant to others be sent via expensive media? Why must a three-page letter cost \$3.00 via fax instead of 29 cents via the United States Postal Service? Neither Federal Express nor facsimile transmissions are acceptable substitutes for first class mail. In re Glasstream Boats, Inc., 146 B.R. 784, 785, 23 B.C.D. 929 (Bankr. M.D. Ga. 1992); In re Gillett Holdings, Inc., 137 B.R. 462, 473 (Bankr. D. Colo. 1992); In re CF & I Fabricators of Utah, 131 B.R. 474, 494, 25 C.B.C.2d 779 (Bankr. D. Utah 1991). Upon the showing of some special need for fax or other expedited means of communication, the Court will reconsider its order disallowing all reimbursement for these expensive forms of communication. Glasstream Boats, 146 B.R. at 786.

Reimbursement of expenses is, by statute, only for "actual, necessary expenses." 11 U.S.C. §330(a)(2) (emphasis added). That a lawfirm may "bill" its photocopy expenses at a certain rate does not require an estate in bankruptcy to pay it, as the firm's billing rate may exceed its costs. If a firm can acquire a product or service more cheaply than the price for which it typically bills it, then billing transforms the firm into

a for-profit merchant of that product or service. Reimbursement of expenses under §330(a)(2) cannot create a profit for the applicant; as it is meant to be entirely compensatory, reimbursing a professional is limited to the applicant's actual out-of-pocket expenditures. Glasstream Boats, 146 B.R. at 785; CF & I Fabricators, 131 B.R. at 494; In re Ginji Corp., 117 B.R. 983, 995, 24 C.B.C.2d 216 (Bankr. D. Nev. 1990); In re Prairie Central Ry., 87 B.R. 952, 960 (Bankr. N.D. Ill. 1988).

The Court takes notice that some for-profit photocopying businesses, ubiquitous in the large cities, including Southfield, Michigan, sell photocopies for a nickel a page.<sup>2</sup> "Photocopying at rates comparable to the rates charged by commercial copy shops in the area is obviously reasonable." In re Seneca Oil Co., 65 B.R. 902, 913 (Bankr. W.D. Okla. 1986); see also In re Orthopaedic Technology, Inc., 97 B.R. 596, 19 B.C.D. 40, 20 C.B.C.2d 722 (Bankr. D. Colo. 1989); In re Island Helicopters, 53 B.R. 71 (Bankr. E.D. N.Y. 1985). Although one cannot expect a lawfirm to send a runner down to the local print shop every time a copy is required, the Court is dubious of the applicant's implicit assertion in its application that its "cost" of copies is 25 cents per page. Accordingly, the Court will allow 10 cents per page for the photocopies in this case. A higher rate "may be justified . . . [if] the applicant shows good cause." Seneca Oil, supra; Prairie Central, supra.

---

<sup>2</sup>Some sell for even less. One location in Southfield will make copies for four cents a page. Some charge up to ten cents a page. None charges twenty-five cents a page.

For these reasons, the Court will enter an order allowing interim compensation to the lawfirm of Nathan & Nathan, P.C. as attorneys for the trustee in the amount of \$6,966.50 and reimbursement of expenses in the amount of \$60.68.

Dated: January 8, 1993.

---

ARTHUR J. SPECTOR  
U.S. Bankruptcy Judge